IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 459 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LIYAKATALI MOHAMEDALI ANSARI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 459 of 2001

MR RJ GOSWAMI for Petitioner No. 1-2

MR PR ABICHANDANI ADDL PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/10/2002

ORAL JUDGEMENT

#. This Revision Application is preferred against the orders passed by the learned Additional Sessions Judge, Ahmedabad Rural, Ahmedabad in Sessions Case No.164 / 2000

below Exh.5 and 10 on 13th July, 2001 and 10th September, 2001 respectively rejecting the prayer for discharge of the revisioners who are accused Nos.5 and 6 before the Sessions Case.

#. The revisioners are accused Nos.5 and 6 along with ten other accused persons and two absconding accused who have been chargesheeted for the offence punishable under Sections 147, 148, 149, 323, 325, 186, 333, 186, 224, 225, 172 and 505 of IPC and Section 135 of the Bombay Police Act. The revisioners had applied for bail and have been granted bail. The revisioners initially tendered Application Exh.5 under Section 227 of the Cr.P.C. for their discharge on the ground that there is no evidence against them in the chargesheet papers. Learned Additional Sessions Judge rejected that application by order dated 13th July, 2001 by observing that statements of witnesses Alakabibi, Faridabanu, Jenabibi, Aslam @ Bapunazir Mahomad indicate involvement and active participation in the incident.

The revisioners thereafter preferred application Exh.10 stating that Alakabibi, Faridabanu, Jenabibi, Aslam @ Bapu Nazir Mohammed are all accused persons and not witnesses and barring their statements, there is no admissible evidence against the revisioners and therefore, they may be discharged from the charges levelled against them. Learned Additional Sessions Judge by order dated September 10, 2001 again rejected the application by observing that there is material to indicate that accused Nos.5 & 6 [present revisioners] were instrumental in facilitating escape of accused Israil Pahelwan who is a hard-core criminal and a wanted criminal.

#. Aggrieved by the said rejection orders, present revision application is preferred by the original accused Nos.5 and 6.

#. Heard learned advocate Mr.Rajesh Goswami for the revisioners and learned APP Mr.P.R.Abichandani for the respondent State. Learned advocate Mr.Goswami produced chargesheet papers which is taken on record. Perused the chargesheet papers produced by learned advocate Mr.Goswami. Learned APP Mr.Abichandani has also been provided with a copy of the said compilation.

#. Learned advocate Mr.Goswami submitted that barring statement of those co-accused persons, there is no iota of evidence against the revisioners indicative of their involvement in the offence for which chargesheet is

filed. Mr.Goswami submitted that the Sessions Court committed an error in observing that the complaint indicates involvement of the present revisioners. He, therefore, urged that this revision may be accepted.

#. Learned APP Mr.Abichandani after having gone through papers makes a statement that complaint does not indicate any involvement of the revisioners in the offence. He also submitted that the chargesheet papers do not contain any other material which would indicate even a remote involvement of the revisioners in the offences for which the chargesheet is filed.

#. This Court has perused the papers to find that submission made by learned APP Mr.Abichandani is borne out from the record and there is no admissible evidence against the revisioners, for which, they may be required or insisted upon to face the trial. It should hardly make any difference that the case involves serious incident. But there is no evidence to involve or implicate any of the revisioners, they cannot be forced to face the trial. The application therefore ought to have been accepted by the trial court. Having failed in doing so, this Court deems it proper to accept this revision application and set aside the orders impugned herein. Orders passed by the Additional Sessions Judge, Ahmedabad Rural, Ahmedabad below Applications Exh.5 and 10 in Sessions Case No.164 / 2000 are hereby set aside. The revisioners - original accused Nos.5 and 6 in the above case are discharged of the charges levelled against the accused persons. Their bail bond shall stand cancelled. Rule absolute.

Trial aginst the other accused may proceed in accordance with law.

Date : 1-10-2002 [A.L.Dave, J.]

#kailash#